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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,421	03/01/2004	Scott G. Manke	040014-0184	6919

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FOLEY & LARDNER LLP  
777 EAST WISCONSIN AVENUE  
MILWAUKEE, WI 53202-5306

EXAMINER
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HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 07/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/790,421

Applicant(s)

MANKE, SCOTT G.

Examiner

Robin A. Hylton

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6-1-04;10-6-05</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Specification***

1. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The title should include at least one inventive feature of the claimed instant invention.

### ***Claim Objections***

2. Claims 10 and 11 are objected to because of the following informalities: it is unclear if the fitment is part of the claimed invention and is within the opening of the container, or just set forth as possibly located within the opening. The claims are considered to be drawn to the combination of the container and fitment as well as the closure. Appropriate correction of the intended scope of the claims is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-9 and 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Schreiber (US 5,111,967).

See column 4, lines 63-67 regarding co-injection molding and column 4, lines 13-16 regarding the material of the gasket.

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To the degree only the closure is set forth as the claimed invention in claims 1-7, the closure cap of Schreiber anticipates the structure of the claims and is configured to contact a fitment in claims 3 and 4.

5. Claims 1-9 and 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Sinnott (US 4,585,135).

See column 5, lines 16-56 regarding applying the gasket to the lid and column 5, lines 49-52 regarding the material of the gasket and column 5, lines 13-15 regarding the lid materials.

To the degree only the closure is set forth as the claimed invention in claims 1-7, the closure cap of Sinnott anticipates the structure of the claims and is configured to contact a fitment in claims 3 and 4.

6. Claims 1-4, 6-11, 13 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Davidson et al. (US 5,108,009).

Davidson teaches threaded container, a fitment positioned in the container opening, and a threaded closure having a gasket configured to contact the fitment and the opening and fluidly sealing the opening (fig.9).

The limitation of "integrally formed" does not impart structure to the claimed closure. Thus, the limitation is not given patentable weight.

7. Claims 1-4, 6-11, 13, and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Kasting et al. (US 6,843,389).

Kasting teaches threaded container, a fitment positioned in the container opening, and a threaded closure having a gasket configured to contact the fitment and the opening and fluidly sealing the opening (fig.25).

Regarding the material of the gasket, the drawing figure depicts the gasket is a plastic or rubber composition. See MPEP 608.02.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 5 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davidson in view of Schreiber.

Davidson teaches threaded container, a fitment positioned in the container opening, and a threaded closure having a gasket configured to contact the fitment and the opening and fluidly sealing the opening. Davidson is silent regarding injection molding the gasket to the closure lid.

Schreiber teaches it is known to apply a gasket to a closure lid by applying a pre-formed gasket or injection molding a gasket to the closure lid.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of injection molding the gasket to the closure lid of Davidson as taught by Schreiber. Doing so is an alternative method of applying a gasket to a closure lid in one manufacturing step.

10. Claims 5 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kasting in view of Schreiber.

Kasting teaches threaded container, a fitment positioned in the container opening, and a threaded closure having a gasket configured to contact the fitment and the opening and fluidly sealing the opening. Kasting is silent regarding injection molding the gasket to the closure lid.

Schreiber teaches it is known to apply a gasket to a closure lid by applying a pre-formed gasket or injection molding a gasket to the closure lid.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of injection molding the gasket to the closure lid of Kasting as taught by Schreiber. Doing so is an alternative method of applying a gasket to a closure lid in one manufacturing step.

### ***Conclusion***

11. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F.R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art closures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

13. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify

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the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

14. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

\_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse, can be reached on (571) 272-4544.


Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). ). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199
- Internet PTO-Home Page <http://www.uspto.gov>

RAH  
April 14, 2006



Robin A. Hylton  
Primary Examiner  
GAU 3727